

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 ARA-16 SPC-03 AID-20 EB-11 NSC-07

RSC-01 CIEP-02 TRSE-00 SS-20 STR-08 OMB-01 CEA-02

CIAE-00 COME-00 FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12

LAB-06 SIL-01 MC-02 IO-14 DODE-00 PM-07 H-03 L-03

PA-04 PRS-01 USIA-15 DRC-01 (ISO) W

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P 072340Z MAR 74

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TO SECSTATE WASHDC PRIORITY 2883

INFO AMCONSUL MONTREAL

AMCONSUL TORONTO

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E.O. 11652: N/A

TAGS: ESTC, CU, CA

SUBJECT: CUBAN ASSETS CONTROL AND QUEBEC LOCOMOTIVE SALE

REF: OTTAWA 637

1. MARCH 6 CBC LATE EVENING NEWS TELECAST AND CP WIRE SERVICE STORY CARRIED IN MARCH 7 TORONTO GLOBE AND MAIL AND MONTREAL GAZETTE REPORT COMMERCE SECRETARY DENT STATING AT SENATE FINANCE COMMITTEE HEARINGS MARCH 6 THAT U.S. DECISION ON SALES OF GOODS TO CUBA BY FOREIGN-BASED SUBSIDIARIES SHOULD ACCOMMODATE THE INTERESTS OF ALL CONCERNED.

2. GLOBE AND MAIL PRINTED TEXT OF CANADIAN NOTE OF FEBRUARY 13 WHICH WAS RELEASED IN OTTAWA YESTERDAY.

3. GAZETTE BUSINESS COLUMNIST JOH MEYER REFERRED TO DIEFENBAKER-EISENHOWER UNDERSTANDING ON TRADE WITH THE PRC IN ARTICLE ENTITLED "DECISION ON UNCLASSIFIED

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MLW-WORTHINGTON MADE IN '60S". MEYER CITED COMMUNIQUE

IN WHICH U.S. ACKNOWLEDGED THAT, WHERE U.S. AND CANADIAN LAW CONFLICT, CANADIAN LAW TAKES PRECEDENCE IN MATTERS CONCERNING U.S. OWNED SUBSIDIARIES IN CANADA. ARTICLE POINTED OUT THAT CANADA IS ALSO GUILTY OF EXTRATERRITORIAL APPLICATION OF ITS LAW IN TREATMENT OF FOREIGN INCOME OF CANADIAN COMPANIES AND APPLICATION OF FOREIGN INVESTMENT REVIEW ACT TO MERGERS OF FOREIGN PARENTS OF CANADIAN SUBSIDIARIES. MEYER REGRETTED THAT MLW SITUATION THREATENS TO BECOME ANOTHER PLATFORM FOR NATIONALISTS, ESPECIALLY THE HIGHLY VOCAL ANTI-AMERICAN MINORITY.

4. IN GAZETTE CP WIRE SERVICE ARTICLE ENTITLED "SHARP: NEXT STEP IN LOCOMOTIVE SALE UP TO MLW", EXTERNAL AFFAIRS MINISTER SHARP REPORTED AS SAYING THAT MLW WOULD DECIDE MARCH 7 WHETHER TO PROCEED WITH SALE. ACCORDING TO ARTICLE, SHARP SAID GOC UNDECIDED ON COURSE OF ACTION IF U.S. DOES NOT GRANT EXEMPTION TO MLW BUT THAT POSSIBILITY "STILL ALIVE" FOR CROWN-OWNED CANADIAN COMMERCIAL CORPORATION TO BUY MLW LOCOMOTIVES FOR SALE TO CUBA. ARTICLE ALSO STATES THAT OFFICIAL SOURCES HAVE INDICATED THAT MLW MIGHT GO AHEAD WITH SALE WITHOUT U.S. APPROVAL, EXPECTING PROTECTION FROM PROMISED AMENDMENTS TO COMPETITION ACT (SEE OTTAWA 570).

5. FOLLOWING ARE EXCERPTS FROM MARCH 7 COLUMN BY RONALD ANERSON, GLOBE AND MAIL BUSINESS COMMENTATOR:

BEGIN TEXT:

A U.S. LEGAL OBSTACLE TO THE SALE OF 25 CANADIAN-MADE LOCOMOTIVES TO CUBA HAS SUDDENLY ERUPTED INTO A HIGHLY CHARGED NATIONALISTIC ISSUE.

THE CONTROVERSY INVOLVING MLW-WORTHINGTON LTD. OF MONTREAL, INDICATES HOW SENSITIVE CANADIANS HAVE BECOME TO THE EXTRATERRITORIAL APPLICATION OF U.S. LAWS.

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RELATIVE TO TOTAL CANADIAN EXPORTS OF
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\$25.2 BILLION IN 1973, HOWEVER, THE LOCOMOTIVE SALE IS INSIGNIFICANT. IN FACT, THE TOTAL VALUE OF EXPORTS BLOCKED BY THE TRADING WITH THE ENEMY ACT OVER THE YEARS IS SMALL.

BUT THIS DOES NOT ALTER THE BASIC INCONGRUITY OF A SITUATION IN WHICH LAWS PASSED BY A FOREIGN GOVERNMENT CAN CONTROL THE EXPORT POLICES OF A CANADIAN CORPORATION.

AN INCREASING NUMBER OF CANADIANS ARE COMING TO REGARD THIS AS AN INTOLERABLE INFRINGEMENT ON NATIONAL SOVEREIGNTY. SINCE FOREIGN PARENT COMPANIES CONTROL 60 PERCENT OF CANADIAN MANUFACTURING (AND ALMOST 100 PERCENT OF SOME INDUSTRIES) THE ULTIMATE DIRECTION OF SECONDARY INDUSTRY IS, IN ANY EVENT, MANAGED BY PEOPLE WHO DO NOT NECESSARILY PUT PRIMARY EMPHASIS ON THE CANADIAN NATIONAL INTEREST.

AS LONG AS THE AFFAIRS OF CANADIAN SUBSIDIARIES ARE CONDUCTED IN ACCORDANCE WITH SOUND BUSINESS PRINCIPLES, MOST CANADIANS DO NOT BECOME EMOTIONALLY SUPERCHARGED OVER THE FOREIGN CONTROL ISSUE--ALTHOUGH THIS IS LESS TRUE NOW THAN IT WAS A DECADE AGO. BUT WHEN FOREIGN POLITICAL CONSIDERATIONS INTRUDE ON THE ALREADY-LIMITED AUTONOMY OF THE FOREIGN-CONTROLLED SECTOR, THE NATIONALIST CAUSE GAINS MANY CONVERTS.

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MLW-WORTHINGTON, FOR EXAMPLE, OPERATED IN CANADA FROM 1904 TO 1946 AS A WHOLLY OWNED SUBSIDIARY OF THE AMERICAN LOCOMOTIVE CO. THE CONTROLLING INTEREST HAS SINCE BEEN REDUCED FROM 100 PERCENT TO 52 PERCENT OF THE OUTSTANDING SHARES. IN 1946 AND AGAIN IN 1955 SHARES WERE MADE AVAILABLE TO THE PUBLIC THROUGH CANADIAN UNDERWRITERS, WHICH, IF FULLY SUBSCRIBED AND IF THE SHARES HAD BEEN RETAINED, WOULD HAVE GIVEN CANADIANS CONTROL OF MONTREAL LOCOMOTIVE WORKS LTD., THE ORIGINAL NAME OF THE COMPANY.

THE U.S. CONTROLLING INTERESTS, THEREFORE, DID MAKE AN EFFORT TO ENCOURAGE CANADIAN OWNERSHIP, ALTHOUGH WORTHINGTON CORP., WHICH ACQUIRED AMERICAN LOCOMOTIVE IN 1964, UNCLASSIFIED

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LATER INCREASED ITS INTEREST TO THE PRESENT 52 PERCENT BY BUYING STOCK IN THE OPEN MARKET.

CANADA'S QUARREL IN THIS MATTER IS NOT WITH THE CORPORATIONS BUT WITH WASHINGTON, AND IT IS AT THIS LEVEL THAT THE MATTER MUST BE SETTLED. THE ISSUE OF THE EXTRATERRITORIAL APPLICATION OF U.S. LAWS HAS BEEN LEFT UNRESOLVED TOO LONG.

ONE PROPOSAL STUDIED IN OTTAWA -- THAT THE CROWN-OWNED CANADIAN COMMERCIAL CORP. SHOULD BUY THE LOCOMOTIVES FROM MLW AND RESELL THEM TO CUBA-- IS HARDLY A SATISFACTORY ANSWER, EVEN IF IT WERE POSSIBLE. OTTAWA WOULD STILL BE DODGING THE REAL ISSUE, AND WOULD BE ACKNOWLEDGING THE AUTHORITY OF WASHINGTON TO CONTROL THE EXPORT OPERATIONS OF

COMPANIES INCORPORATED IN THIS COUNTRY.

PRIME MINISTER PIERRE TRUDEAU INDICATED THIS WEEK THAT THE GOVERNMENT'S MAIN APPROACH TO SOLVING THE PROBLEM WOULD BE THROUGH MORAL SUASION AND CONSULTATION WITH U.S. OFFICIALS. IN PREVIOUS SITUATIONS OF THIS KIND, CANADA HAS SOMETIMES GAINED AN EXEMPTION FROM THE APPLICATION OF THE U.S. LAW. WHILE THIS OVERCOMES THE IMMEDIATE DIFFICULTY, IT LEAVES THE ISSUE UNRESOLVED.

THE PROBLEM WILL CONTINUE TO RECUR UNTIL THE TWO COUNTRIES COME TO A FIRM AGREEMENT THAT U.S. LAWS DO NOT EXTEND ACROSS THE BORDER. ONE ANSWER MIGHT COME OUT OF THE UNITED NATIONS' EFFORTS TO ACHIEVE INTERNATIONAL AGREEMENT THAT MULTI-NATIONAL CORPORATIONS ARE SUBJECT TO CONTROL BY THE HOST COUNTRIES, AND THAT THE PARENT-SUBSIDIARY RELATIONSHIP WILL NOT SERVE AS A VEHICLE FOR EXTENDING ONE COUNTRY'S LAWS INTO ANOTHER COUNTRY. IF THIS APPROACH IS UNSUCCESSFUL, CANADA MAY BE FORCED TO TAKE A STIFF LINE IN BILATERAL NEGOTIATIONS.

END TEXT

6. COMPLETE TEXTS OF ARTICLES BEING AIRPOUCHED TO
EUR/CAN - BROWN AND EB/ITP/EWT - MR. WRIGHT.
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